

August 11, 2008

***Via First Class Mail***

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Re: *State of Wisconsin v. Amgen Inc., et al.*  
Case No. 04 CV 1709

Dear Counsel:

Enclosed please find *Novartis Pharmaceuticals Corporation's Responses and Objections to the Plaintiff's Second Set of Consolidated Discovery Requests to All Defendants*, being served today on all counsel of record via LexisNexis File and Serve as shown below. Please note that we have retained the original document pursuant to the requirements of the Wisconsin statute. Please also note that we will serve the signed Verification under separate cover as soon as we receive it.

If you have any questions, please do not hesitate to call.

Sincerely,

SOLHEIM BILLING &amp; GRIMMER, S.C.

By   
Jennifer L. Amundsen

JLA/jck  
Enclosure

cc: All Counsel of record (*via LNFS; w/ enclosure*)  
Atty. Christine Braun (*via email; w/ enclosure*)  
Atty. Diedra Fox (*via email; w/ enclosure*)  
Atty. Kim Grimmer (*via email; w/ enclosure*)

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**STATE OF WISCONSIN,**

Plaintiff,

Case No. 04-CV-1709  
Unclassified - Civil: 30703

v.

**AMGEN INC., et al.,**Defendants.

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**NOVARTIS PHARMACEUTICALS CORPORATION'S RESPONSES AND  
OBJECTIONS TO THE PLAINTIFF'S SECOND SET OF  
CONSOLIDATED DISCOVERY REQUESTS TO ALL DEFENDANTS**

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Pursuant to Wisconsin Statutes §§ 804.01, 804.08, and 804.09, the Wisconsin Supreme Court Rules, and the Dane County Circuit Court Rules (collectively, the "Wisconsin Rules"), Defendant Novartis Pharmaceuticals Corporation ("NPC"), by its undersigned counsel, responds as follows (the "Responses") to Plaintiff State of Wisconsin's Second Set of Consolidated Discovery Requests to All Defendants served on or about July 10, 2008 (the "Interrogatories" and the "Requests"):

**GENERAL OBJECTIONS**

A. By responding to these Interrogatories and Requests, NPC does not waive or intend to waive: (i) any objections as to the competency, relevancy, materiality, or admissibility as evidence, for any purpose, of any information provided in response to these Interrogatories and Requests; (ii) the right to object on any ground to the use of the information provided in response to these Interrogatories and Requests at any hearing or trial; (iii) the right to object on any ground at any time to a demand for further responses to these Interrogatories and Requests; or (iv) the right at any time to revise, correct, add to, supplement, or clarify any of the responses contained herein.

B. NPC objects to each Interrogatory and Request to the extent that they purport to seek information protected by the attorney-client privilege, work-product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections.

C. By responding that it will provide information or documents in response to a particular Interrogatory or Request, NPC does not warrant that it has responsive materials or that such materials exist, only that it will conduct a reasonable search and make available responsive, non-privileged information or documents. No objection, or lack thereof, is an admission by NPC as to the availability or unavailability of any information, or the existence or non-existence of any documents. Where NPC has already identified specific information or documents responsive to a particular Interrogatory or Request and states that it will produce responsive documents “including” certain specifically identified information or documents, “including” means “including but not limited to.”

D. These Responses are based on NPC’s investigation to date of those sources within its control where it reasonably believes responsive information or documents may exist. NPC reserves the right to amend or supplement these Responses in accordance with the Wisconsin Rules with additional information, documents, or objections that may become available or come to NPC’s attention, and to rely upon such information, documents, or objections in any hearing, trial, or other proceeding in this litigation.

E. NPC objects to Plaintiff’s “Definitions” and “Instructions” to the extent that they purport to expand upon or alter NPC’s obligations under the Wisconsin Rules.

F. NPC objects to each Interrogatory and Request that purports to require NPC to identify and/or produce “all” information or documents described by such Interrogatory or Request as unduly burdensome, cumulative, duplicative, and vexatious on its face. NPC will search for and produce information or documents sufficient to provide the information or data sought by specific Interrogatories or Requests, and where appropriate (*i.e.*, where non-identical documents provide additional relevant information), NPC will identify and/or produce such information or documents.

G. NPC objects to these Interrogatories and Requests to the extent that they seek information not contained in documents that currently exist at NPC and purport to require NPC to create, compile or develop new documents.

H. NPC objects to these Interrogatories and Requests to the extent that they seek production of information or documents not in NPC’s possession, custody or control, publicly available information, information or documents equally available to Plaintiff, or information or documents more appropriately sought from third parties to whom subpoenas or requests could be or have been directed.

I. NPC objects to these Interrogatories and Requests to the extent that they seek information about conduct outside of the State of Wisconsin.

J. Given the confidential and proprietary nature of the information requested, NPC’s provision of information is subject to and in reliance upon the Protective Order limiting the scope of disclosure, review, and dissemination of documents entered in this action by the Circuit Court for Dane County on November 29, 2005.

K. NPC objects to these Interrogatories and Requests to the extent that they seek information outside the limitations periods applicable to the claims in the Second Amended Complaint, or beyond the time period relevant to this litigation, on the grounds that such information is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. In addition, NPC objects to these Interrogatories and Requests to the extent they purport to require NPC to search for and produce information pertaining to the time period prior to January 1, 1997, the date NPC was created by operation of merger following approval by the Federal Trade Commission on December 17, 1996, or after September 30, 2003, the date on which the State of Nevada's Second Amended Complaint in *State of Nevada v. Am. Home Prods. Corp., et al.*, Cause No.CV-N-02-0202-ECR (D. Nev.), brought by the Nevada Attorney General and containing similar allegations against NPC as those alleged by Plaintiff, was publicly filed, thereby placing the Plaintiff on notice, no later than that date, of the allegations against NPC, on the grounds that such information is neither relevant to the subject matter of the pending action nor reasonably calculated to lead to the discovery of admissible evidence. NPC's provision of any information pertaining to the time period before January 1, 1997, or after September 30, 2003, does not constitute a waiver of this objection.

L. NPC hereby incorporates by reference as if fully set forth herein any objection or reservation of rights made by any other Defendant in this action to the extent such objection or reservation of rights is not inconsistent with NPC's position in this action.

M. The information provided in response to these Interrogatories and Requests is for use in this litigation and for no other purpose.

## OBJECTIONS TO DEFINITIONS

1. The term “document” means any writing or recording of any kind, including, without limitation, agendas, agreements, analyses, announcements, audits, booklets, books, brochures, calendars, charts, contracts, correspondence, electronic-mail (e-mail), facsimiles (faxes), film, graphs, letters, memos, maps, minutes (particularly Board of Directors and/or Executive Committee meeting minutes), notes, notices, photographs, reports, schedules, summaries, tables, telegrams, and videotapes, in any medium, whether written, graphic, pictorial, photographic, electronic, phonographic, mechanical, taped, saved on a computer disk, hard drives, data tapes, or otherwise, and every non-identical copy. Different versions of the same document, such as different copies of a written record bearing different handwritten notations, are different documents within the meaning of the term as used. In case originals or original non-identical copies are not available, “document” includes copies of originals or copies of non-identical copies as the case may be.

N. NPC objects to the definition of “document” as set forth in Definition No. 1 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, NPC’s obligations under the Wisconsin Rules.

2. The term “identify,” when used in reference to a natural person, means to state the person’s:
  - (a) first and last name;
  - (b) current or last-known job title;
  - (c) current or last-known business address;
  - (d) current or last-known business telephone number;
  - (e) current or last-known home address; and
  - (f) current or last-known home telephone number.

O. NPC objects to the definition of “identify” as set forth in Definition No. 2 on the grounds that it is overly broad and unduly burdensome. NPC further objects to Definition No. 2 to the extent that it seeks to impose discovery obligations that are broader than, or inconsistent with, NPC’s obligations under the Wisconsin Rules.

3. The term “you,” “your,” “your company” means each defendant, its domestic or foreign parents, and any other affiliated company, subsidiary, division, joint venture or other entity having at least 10% ownership interest in defendant; defendant’s agents, independent contractors, directors, employees, officers, and representatives; and merged, consolidated or acquired predecessors; and any other person or entity acting on behalf of defendant.

P. NPC objects to Definition No. 3 on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence and states that all responses herein are on behalf of Defendant Novartis Pharmaceuticals Corporation only.

**OBJECTIONS TO INSTRUCTIONS FOR INTERROGATORIES**

1. In answering these interrogatories, you are required to furnish all information that is available to you or subject to reasonable inquiry by you, including information in your possession, or the possession of your attorneys, and anyone else subject to your, or your attorneys' control.

Q. NPC objects to Instruction for Interrogatories No. 1 to the extent that it seeks to impose on NPC any obligation in conflict with or beyond those imposed by the Wisconsin Rules. NPC further objects to Instruction No. 1 to the extent that it purports to seek information protected by the attorney-client privilege, work product doctrine, common-interest doctrine, joint-defense privilege, or any other applicable privileges or protections. In addition, NPC objects to Instruction No. 1 on the grounds that it is unduly burdensome, cumulative, duplicative, and vexatious on its face in that it purports to require NPC to provide "all" available information in its possession.

2. These interrogatories should always be interpreted to be inclusive rather than exclusive, including interpreting the following as appropriate: the singular form of a word as plural, and vice versa; and "and" to include "or," and vice versa; the past tense to include the present tense, and vice versa.

3. In responding to these interrogatories, preface each answer by restating the interrogatory to which it is addressed. If an interrogatory has subparts, answer each subpart separately and in full and do not limit your answer to the interrogatory as a whole. If you are unable to answer an interrogatory fully, submit as much information as is available, explain why your answer is incomplete, and state the source or sources from which a complete or more complete answer may be obtained.

4. You have a duty to seasonably supplement or amend any answer or response whenever new or additional information subsequently becomes known to you.

R. NPC objects to Instructions for Interrogatories Nos. 2-4 to the extent that they seek to impose on NPC any obligation in conflict with or beyond those imposed by the Wisconsin Rules.

**OBJECTIONS TO INSTRUCTIONS FOR REQUESTS FOR ADMISSIONS**

1. Each matter of which admission is requested is admitted unless, within 30 days after service of the request, you serve upon plaintiff a written answer or objection addressed to the matter, signed by you or your attorney.
2. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why you cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that you qualify an answer or deny only a part of the matter of which an admission is requested, you shall specify so much of it as is true and qualify or deny the remainder.
3. You may not give lack of information or knowledge as a reason for failure to admit or deny unless you state that you have made reasonable inquiry and that the information known or readily obtainable by you is insufficient to enable you to admit or deny.
4. If you consider that a matter of which an admission has been requested presents a genuine issue for trial, you may not, on that ground alone, object to the request.
5. If you fail or refuse to admit the truth of any request of fact hereinafter set forth, and plaintiff hereafter proves its truth, you may be required to pay the reasonable expenses incurred by plaintiff in making such proof, including attorneys' fees.

S. NPC objects to Instructions for Requests for Admissions Nos. 1-5 to the extent that they seek to impose on NPC any obligation in conflict with or beyond those imposed by the Wisconsin Rules.

**OBJECTIONS TO INSTRUCTIONS FOR REQUESTS FOR PRODUCTION OF DOCUMENTS**

1. You have a duty to seasonably supplement any response to the extent of documents which subsequently come into your possession or control or become known to you.

T. NPC objects to Instruction for Request for Production of Documents No. 1 to the extent that it seeks to impose any obligation in conflict with or beyond those imposed by

the Wisconsin Rules. NPC states that it will search for and produce documents in accordance with the Wisconsin Rules.

### **OBJECTIONS TO INSTRUCTIONS FOR ALL DISCOVERY REQUESTS**

1. If you object, in whole or in part, to any request for admission, interrogatory, or request for production of documents, state with specificity the full objection(s) and the particularized basis for each objection. To the extent that you object to any portion of an interrogatory, you must respond to the remaining portion of the interrogatory to which you do not object.
2. If you object to any request for admission, interrogatory, or request for production of documents in whole or in part on the basis of any claimed privilege, provide the following information for each communication or information for which you claim a privilege:
  - (a) the type of communication or information (e.g., meeting, phone call, letter, data);
  - (b) the date of the communication or information;
  - (c) the identity of the author of any written communication, the speaker of any oral communication or the source of any information;
  - (d) the identity of all persons who received or had access to any written communication or information and all persons present during any oral communication;
  - (e) the subject matter of the communication or information;
  - (f) the location of any information, written communication and recordings of any oral communication; and
  - (g) the factual and legal basis on which you claim privilege.

U. NPC objects to Instructions for All Discovery Requests Nos. 1-2 to the extent that they seek to impose on NPC any obligation in conflict with or beyond those imposed by the Wisconsin Rules.

### **SPECIFIC OBJECTIONS AND RESPONSES TO CONSOLIDATED DISCOVERY REQUESTS**

NPC incorporates by reference each of the foregoing General Objections, Objections to Definitions, Objections to Instructions for Interrogatories, Objections to Instructions for Requests for Admission, Objections to Instructions for Request for Production of Documents, and Objections to Instructions for All Discovery Requests in each of the following Responses and Objections to Individual Requests for Admission, Interrogatories, and Requests

for Production of Documents as if fully set forth within each. NPC further incorporates by reference each Specific Objection set forth below in each of the following Responses to Individual Requests for Admission, Interrogatories, and Requests for Production of Documents as if fully set forth within each. To the extent that NPC provides responses to any Requests to Admit or to any Interrogatory, or states that it will search for and produce documents responsive to any Request, such responses are provided subject to, and without waiver or limitation of, all General and Specific Objections.

### **CONSOLIDATED DISCOVERY REQUEST NO. 7**

**REQUEST FOR ADMISSION NO. 7:** At no time has the State of Wisconsin and you agreed on the meaning or definition of average wholesale price (“AWP”).

**OBJECTION TO REQUEST FOR ADMISSION NO. 7:** NPC objects to Request for Admission No. 7 to the extent it seeks information that is not within NPC’s possession, custody or control, publicly available, or more readily available to Plaintiff.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:** NPC denies Request for Admission No. 7.

**INTERROGATORY NO. 7:** If your response to request for admission no. 7 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of AWP that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (c) state whether you contend that the State of Wisconsin and you agree on the definition of AWP provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;

- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of AWP provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of AWP provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of AWP;
- (g) identify all documents supporting your response to request for admission no. 7;
- (h) identify all documents supporting your answer to interrogatory no. 7, including all subparts; and
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 7, including all subparts.

**OBJECTION TO INTERROGATORY NO. 7:** NPC incorporates its objection to Request for Admission No. 7 in its Response to Interrogatory No. 7.

**RESPONSE TO INTERROGATORY NO. 7:** NPC states that – based on common usage by entities that buy, sell, pay for, or manufacture brand name prescription drugs and information published by various federal government agencies and others – both it and Plaintiff understood throughout the entire relevant time period that published AWP’s for brand name prescription drugs are reference or benchmark prices that are higher than the average net prices paid by retailers or physicians to wholesalers for such drugs, and that such net prices are generally at least 16% to 20% less than published AWP. In addition, as Plaintiff is aware, NPC states that it did not control how First DataBank created and/or published its AWP’s. NPC further states that Plaintiff chose and continues to use a formula that relies on a discount off of published AWP to calculate its reimbursements to pharmacies and physicians who dispense drugs to Medicaid

patients in part because of its understanding that published AWP's are higher than the net prices pharmacies and physicians pay for such drugs. NPC believes that Plaintiff's conduct reflects or constitutes its agreement to the use of published AWP's in a manner consistent with the understanding of other third party payors, state and federal entities that purchase brand name drugs, retailers, wholesalers, and manufacturers. NPC additionally states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. NPC refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to Interrogatory No. 7.

Additionally, NPC states that it provided letters to Wisconsin's Department of Health and Family Services ("DHFS") announcing the availability of new products that included an AWP for each new product (until NPC ceased providing AWP in 2005). Each new product introduction letter that contained an AWP generally also included a statement related to AWP (the "AWP statement"). Although the exact wording of the AWP statement changed slightly over the years, the central message remained the same. Each AWP statement provided that AWP is not intended to represent an actual price charged by NPC to any customer. For example, NPC's January 21, 2000 letter to DHFS announcing the introduction of Trileptal tablets states:

As used in this letter, the term AWP or Average Wholesaler Price constitutes a reference for each Novartis product, and in keeping with the current industry practices, is set as a percentage above the price at which each product is offered generally to wholesalers." Notwithstanding the inclusion of the term price, in Average Wholesaler Price, AWP is not intended to be a price charged by Novartis for any product to any customer.

These new product introduction letters that NPC sent to DHFS during the relevant time period have been produced to Plaintiff, including, but not limited to, those marked with the following production numbers: NPC-AGC003751889 - 003751920. Examples of these letters have also

been produced by Plaintiff from DHFS's files. *See, e.g.*, WI-PROD-AWP-127128-127134 and WI-PROD-AWP-127136 - 127137.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:** Produce all documents identified in your response to interrogatory no. 7.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:** NPC incorporates its Response to Interrogatory No. 7 in its Response to Request for Production of Documents No. 7.

### **CONSOLIDATED DISCOVERY REQUEST NO. 8**

**REQUEST FOR ADMISSION NO. 8:** At no time has the State of Wisconsin and you agreed on the meaning or definition of wholesale acquisition cost ("WAC").

**OBJECTIONS TO REQUEST FOR ADMISSION NO. 8:** NPC objects to this request to the extent it seeks information that is not within NPC's possession, custody or control, publicly available, or more readily available to Plaintiff. NPC further objects to this request on the ground that it is overly broad, unduly burdensome, and not reasonably calculated to lead to admissible evidence in that Wisconsin Medicaid did not use WAC for reimbursement of prescription drugs.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8:** NPC denies Request for Admission No. 8.

**INTERROGATORY NO. 8:** If your response to request for admission no. 8 is anything other than an unqualified admission, state all bases for your response, including the following:

- (a) identify the definition of WAC that you contend the State of Wisconsin and you agreed on;
- (b) identify the date when you contend that the State of Wisconsin and you first agreed on the definition of WAC provided in response to subpart (a) of this interrogatory

- (c) state whether you contend that the State of Wisconsin and you agree on the definition of WAC provided in your response to subpart (a) of this interrogatory as of the date that you answer this second set of consolidated discovery requests to all defendants;
- (d) if your answer to subpart (c) is “no,” identify the last date when you contend the State of Wisconsin and you agreed on the definition of WAC provided in response to subpart (a) of this interrogatory;
- (e) state whether you contend that the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory;
- (f) if your answer to subpart (e) is “yes,” describe in detail the manner in which the State of Wisconsin and you together developed the definition of WAC provided in response to subpart (a) of this interrogatory, including (1) the identity of each person involved in the development of the definition; (2) the role of each such person; (3) the dates of each such person’s participation in the development of the definition; and (4) the dates and substance of each communication between the State of Wisconsin and you regarding the development of the definition of WAC;
- (g) identify all documents supporting your response to request for admission no. 8;
- (h) identify all documents supporting your answer to interrogatory no. 8, including all subparts;
- (i) identify all documents supporting any contention you provide in your answer to interrogatory no. 8, including all subparts.

**OBJECTION TO INTERROGATORY NO. 8:** NPC incorporates its objections to Request for Admission No. 8 in its Response to Interrogatory No. 8.

**RESPONSE TO INTERROGATORY NO. 8:** NPC states that – based on common usage by entities that buy, sell, pay for, or manufacture brand name prescription drugs and information published by various federal government agencies and others – both it and the State of Wisconsin understood throughout the entire relevant time period that WAC is a list price for brand name prescription drugs that does not include discounts or credit terms (such as a common and customary “prompt-pay” discount or credit provided to those customers who pay within a specified period of time). NPC believes that Plaintiff’s conduct reflects or constitutes its agreement to the use of published WACs in a manner consistent with the understanding of other

third party payors, state and federal entities that purchase brand name drugs, retailers, wholesalers, and manufacturers. NPC further states that Plaintiff is already in possession of documents from which the answer to this interrogatory may be obtained. Such documents include, but are not limited to, federal statutes, reports from various branches of the federal government and, upon information and belief, documents from the files of various agencies of the State of Wisconsin. Additionally, NPC refers Plaintiff to Defendants' briefing and attached exhibits filed in response to Plaintiff's motions for summary judgment, which contain information generally responsive to Interrogatory No. 8.

**REQUEST FOR PRODUCTION OF DOCUMENTS NO. 8:** Produce all documents identified in your response to interrogatory no. 8.

**RESPONSE FOR PRODUCTION OF DOCUMENTS NO. 8:** NPC incorporates its Response to Interrogatory No. 8 in its Response to Request for Production of Documents No. 8.

Dated this 11th day of August, 2008.

**AS TO OBJECTIONS:**

Respectfully submitted

Novartis Pharmaceuticals Corporation

By its attorneys,



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